

1 HB59
2 164956-2
3 By Representative Lee
4 RFD: Economic Development and Tourism
5 First Read: 03-MAR-15
6 PFD: 02/27/2015

1 continued applicability of Chapter 9B of Title 40, Code of
2 Alabama 1975, to private users; to provide that no company
3 shall have any right to incentives that are granted absent
4 strict compliance with this act; to provide that no cause of
5 action shall exist for the denial of any benefit under this
6 act; to authorize abatements of state ad valorem taxes and
7 local noneducational ad valorem taxes for a period of up to 20
8 years; to provide that neither an inducement nor a request for
9 inducement is required to apply for, grant, or receive any
10 abatement of taxes allowed to be abated; to update the NAICS
11 codes and include other activities; to provide that abatements
12 would end if the property has ceased to be used for its
13 intended purpose for at least 6 months; for ad valorem tax
14 abatements longer than 10 years, to provide that municipal
15 taxes could be abated only by the municipality, county taxes
16 only by the county, and state taxes only by the Governor; to
17 provide for the disposition of financial remuneration paid by
18 private users after an abatement, based on the tax proceeds
19 which would have been paid; to create a new Chapter 9G of
20 Title 40, Code of Alabama 1975; to amend Sections 40-9B-3 and
21 40-9B-5, Code of Alabama 1975; to provide for the promulgation
22 of regulations; to provide for the severability of invalid
23 provisions; to provide for the repeal of conflicting laws; to
24 provide for an effective date.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. This act shall be known as the "Alabama
27 Reinvestment and Abatements Act".

1 Section 2. A new Chapter 9G of Title 40, Code of
2 Alabama 1975, is created to read as follows:

3 § 40-9G-1. For purposes of the chapter, the
4 following words and phrases shall have the following meaning:

5 (1) APPROVED ACTIVITY. The conduct of an activity
6 that is predominantly any one or more of the following:

7 a. Described by NAICS Code 1133, 115111, 2121,
8 22111, 221330, 31 (other than 311811), 32, 33, 423, 424, 482,
9 4862, 48691, 48699, 48819, 4882, 4883 (other than 48833), 493,
10 511, 5121 (other than 51213), 51221, 517, 518 (without regard
11 to the premise that data processing and related services be
12 performed in conjunction with a third party), 51913, 52232,
13 54133 (if predominantly in furtherance of another activity
14 described in this article), 54134 (if predominantly in
15 furtherance of another activity described in this article),
16 54138, 5415, 541614, 5417, 55 (if not for the production of
17 electricity), 561422 (other than establishments that originate
18 telephone calls), 562213, 56291, 56292, 611512, 927 or 92811.

19 b. The production of biofuel as such term is defined
20 in Section 2-2-90(c)(2).

21 c. The conduct of original investigations undertaken
22 on a systematic basis to gain new knowledge or the application
23 of research findings or other scientific knowledge to create
24 new or significantly improved products or processes.

25 d. The national or regional headquarters for a
26 company that conducts significant business operations outside
27 the state and that will serve as the principal office of the

1 company's principal operating officer with chief
2 responsibility for the daily business operations of the
3 company.

4 e. A target of the state's economic development
5 efforts pursuant to either of the following:

6 (i) The Accelerate Alabama Strategic Economic
7 Development Plan adopted in January 2012 by the Alabama
8 Economic Development Alliance, created by Executive Order
9 Number 21 of the Governor on July 18, 2011, or any amended
10 version or successor document thereto; or

11 (ii) A type listed in a regulation adopted by the
12 Department of Commerce, other than a regulation submitted as
13 an emergency rule.

14 Notwithstanding the foregoing, an approved activity
15 shall not predominantly concern farming activities involving
16 trees, animals or crops, nor the retail sale of tangible
17 personal property or services. This provision shall not be
18 deemed to exclude customer service centers, call centers or
19 headquarters otherwise allowed by this subsection (1).

20 (2) COMPANY. Anyone or anything which has the powers
21 to own a project and have employees.

22 (3) NAICS CODE. Any sector, subsector, industry
23 group, industry or national industry of the 2012 North
24 American Industry Classification System, or any similar
25 classification system developed in conjunction with the United
26 States Department of Commerce or Office of Management and
27 Budget.

1 (4) QUALIFYING PROJECT. Any project a. that proposes
2 to invest in capital expenditures that equal or exceed
3 \$2,000,000 as part of any addition, expansion, improvement,
4 renovation, re-opening, or rehabilitation of a facility, or
5 replacement of any existing equipment or tangible personal
6 property; b. that predominantly involves an approved activity;
7 and c. for which no project agreement has been entered into
8 with the Governor for the provision of other incentives.

9 (5) UTILITY TAXES. The taxes imposed by Sections
10 40-21-82 and 40-21-102.

11 § 40-9G-2.

12 (a) For any qualifying project, an abatement may be
13 allowed for ad valorem taxes and construction related
14 transaction taxes.

15 (1) The abatement of construction related
16 transaction taxes shall be subject to and shall follow the
17 procedures, provisions, limitations, and definitions of
18 Chapter 9B, except that capitalized repairs, rebuilds,
19 maintenance and replacement equipment shall qualify for
20 abatements.

21 (2) The abatement of ad valorem taxes shall be
22 subject to and shall follow the procedures, provisions,
23 limitations, and definitions of Chapter 9B, except as follows:

24 a. The amount of the ad valorem tax abatement shall
25 be equal to the ad valorem taxes owed, minus the ad valorem
26 taxes owed from the tax year immediately before the qualifying
27 project was placed in service;

1 b. As to any ad valorem tax abatement, capitalized
2 repairs, rebuilds, maintenance and replacement equipment shall
3 qualify for abatements; and

4 c. Regardless of the length of the abatement, county
5 noneducational taxes may be abated only with the consent by
6 resolution of the governing body of the county, municipal
7 noneducational taxes may be abated only with the consent by
8 resolution of the governing body of the municipality, and
9 state ad valorem taxes may be abated only with the consent of
10 the Governor. The governing body of a county and a
11 municipality may separately authorize one or more public
12 industrial authorities to provide by resolution for such
13 consent on its behalf.

14 (b) For any qualifying project, a refund of utility
15 taxes may be allowed for up to a ten-year period. The refund
16 shall be calculated and paid annually, as follows:

17 (1) The amount of the refund shall be equal to the
18 utility taxes paid, minus the utility taxes paid on average
19 during the three tax years immediately before the qualifying
20 project was placed in service.

21 (2) For each year of the incentive period for the
22 utility tax refund, the incentivized company shall submit to
23 the Department of Commerce a certification as to the utility
24 taxes paid during the prior year. Following such examination
25 as it deems necessary, the Department of Commerce may certify
26 the information and deliver same to the Department of Revenue.

1 Thereafter, the Department of Revenue shall calculate the
2 correct refund and issue it directly to the company.

3 The Department of Finance shall promulgate
4 regulations to ensure that the refund in no case would reduce
5 the distribution for the Alabama Special Mental Health Trust
6 Fund.

7 An incentivized company may assign and convey a
8 utility tax refund to another entity if substantially all of
9 the assets of the incentivized company are assigned and
10 conveyed in the same transaction. Proof of such transfer shall
11 be submitted to the Departments of Commerce and Revenue.

12 (c) For any qualifying project, AIDT training for
13 new or current employees to operate new and replacement
14 equipment may be provided.

15 (d) In order to receive the incentives described in
16 subsections (b) or (c), the following shall occur:

17 (1) For any company that proposes a qualifying
18 project, the Secretary of Commerce shall make the following
19 findings:

20 a. That the project is in fact a qualifying project;

21 b. That the company or any related company has not
22 defaulted on a project agreement or similar agreement, or any
23 economic incentive agreement at any time during the last 10
24 years; and

25 c. That the qualifying project will promote the
26 continued and sustained operation of the company's business
27 operations in Alabama.

1 (2) Upon making affirmative findings on the criteria
2 set forth in paragraph (1), the Secretary of Commerce shall
3 recommend to the Governor that the company and qualifying
4 project be approved for one or more of the incentives
5 described in subsections (b) and (c). The name of the company
6 and information collected about it and the qualifying project
7 by the Secretary shall be forwarded to the Governor.

8 (3) After reviewing the information provided by the
9 Secretary of Commerce, the Governor shall also determine
10 whether the company and the qualifying project meet the
11 criteria set forth in paragraph (1). If the Governor makes
12 such a finding, the company and qualifying project may claim
13 the incentives provided in subsections (b) and (c).

14 (e) All filings made by a private party with any
15 department of the state government shall be made using forms
16 promulgated by such department. Any such filing shall be
17 treated as a tax return, subject to penalties imposed by the
18 Department of Revenue.

19 (f) Nothing in this chapter shall be construed to
20 limit the powers otherwise existing for the Department of
21 Revenue to audit and assess a company. Nothing in this chapter
22 shall be construed to limit the applicability of Chapter 9B to
23 a private user, as such term is used in Chapter 9B.

24 (g) Nothing in this chapter shall be construed to
25 make available to any company any right to the benefits
26 conferred by this chapter absent strict compliance with this

1 chapter. No cause of action shall exist for the denial of any
2 benefit under this article.

3 (h) The Departments of Commerce and Revenue shall
4 promulgate regulations to implement and administer the
5 provisions of this act.

6 Section 3. Sections 40-9B-3 and 40-9B-5, Code of
7 Alabama 1975, are amended to read as follows:

8 "§40-9B-3.

9 "(a) For purposes of this chapter, the following
10 words and phrases mean:

11 (1) ABATE, ABATEMENT. A reduction or elimination of
12 a taxpayer's liability for tax or payments required to be made
13 in lieu thereof. An abatement of transaction taxes imposed
14 under Chapter 23 of this title, or payments required to be
15 made in lieu thereof, shall relieve the seller from the
16 obligation to collect and pay over the transaction tax as if
17 the sale were to a person exempt, to the extent of the
18 abatement, from the transaction tax.

19 (2) ALTERNATIVE ENERGY RESOURCES. The definition
20 given in Section 40-18-1.

21 (3) CONSTRUCTION RELATED TRANSACTION TAXES. The
22 transaction taxes imposed by Chapter 23 of this title, or
23 payments required to be made in lieu thereof, on tangible
24 personal property and taxable services incorporated into an
25 industrial development property, the cost of which may be
26 added to capital account with respect to the property,
27 determined without regard to any rule which permits

1 expenditures properly chargeable to capital account to be
2 treated as current expenses.

3 (4) DATA PROCESSING CENTER. An establishment at
4 which not less than 20 new jobs are located, the average
5 annual total compensation, including benefits, of such new
6 jobs to be not less than forty thousand dollars (\$40,000) and
7 such establishment is engaged in the provision of complete
8 processing and specialized reports from data, the provision of
9 automated data processing and data entry services, the
10 provision of an infrastructure for hosting or data processing
11 services, the provision of specialized hosting activities, the
12 provision of application service provisioning, the provision
13 of general time-share mainframe facilities, the provision or
14 operation of computer equipment or enabling software for the
15 processing, storage, backup, retrieval, communication or
16 distribution of data, or some combination of the foregoing,
17 without regard to whether any other activities are conducted
18 at the establishment.

19 (5) EDUCATION TAXES. Ad valorem taxes, or payments
20 required to be made in lieu thereof, that must, pursuant to
21 the Constitution of Alabama of 1901, as amended, legislative
22 act, or the resolution or other action of the governing board
23 authorizing the tax, be used for educational purposes or for
24 capital improvements for education and local construction
25 related transaction taxes levied for educational purposes or
26 for capital improvements for education.

1 (6) HEADQUARTERS FACILITY. Any trade or business
2 described in ~~the 2007 North American Industry Classification~~
3 ~~System, promulgated by the Executive Office of the President~~
4 ~~of the United States, Office of Management and Budget,~~
5 ~~National Industry~~ NACIS Code 551114, at which not less than 50
6 new jobs are located.

7 (7) HYDROPOWER PRODUCTION. The definition given in
8 Section 40-18-1.

9 (8) INDUCEMENT. Refers to an agreement, or an
10 "inducement agreement," entered into between a private user
11 and a public authority or county or municipal government
12 and/or a resolution or other official action, an "inducement
13 resolution," "inducement letter," or "official action" adopted
14 by a public authority or county or municipal government, in
15 each case expressing, among other things, the present intent
16 of such public authority or county or municipal government to
17 issue bonds in connection with the private use property
18 therein described. Notwithstanding any provision in this
19 chapter to the contrary, neither an inducement nor a request
20 for inducement shall be required to apply for, grant, or
21 receive any abatement of taxes allowed to be abated under this
22 chapter.

23 (9) INDUSTRIAL DEVELOPMENT PROPERTY. Real and/or
24 personal property acquired in connection with establishing or
25 expanding an industrial or research enterprise in Alabama.

26 (10) INDUSTRIAL OR RESEARCH ENTERPRISE.

1 a. Any trade or business ~~described in the 2007 North~~
2 ~~American Industry Classification System, promulgated by the~~
3 ~~Executive Office of the President of the United States, Office~~
4 ~~of Management and Budget, Sectors 31 (other than National~~
5 ~~Industry predominately consisting of any one or more of the~~
6 following:

7 1. Described by NAICS Code 1133, 115111, 2121,
8 22111, 221330, 31 (other than 311811), 32, and 33; Subsectors
9 423, 424, 493 where the trade or business will (i) provide
10 logistics services related to the distribution of goods, (ii)
11 employ 50 or more persons within the first two years after
12 being placed in service, and (iii) involve a capital
13 investment of at least five million dollars (\$5,000,000),
14 except that the investment in a trade or business located in a
15 favored geographic area, as that term is defined in Section
16 40-18-190(a)(6), must exceed one million dollars (\$1,000,000),
17 511, and 927; Industry Groups 2121, 5417, 5415, and 5182 33,
18 423, 424, 482, 4862, 48691, 48699, 48819, 4882, 4883 (other
19 than 48833), 493, 511, 5121 (other than 51213), 51221, 517,
20 518 (without regard to the premise that data processing and
21 related services be performed in conjunction with a
22 third-party); Industries 11331 and 48691; and National
23 Industries 115111, 517110, 541380, and party), 51913, 52232,
24 54133 (if predominantly in furtherance of another activity
25 described in this article), 54134 (if predominantly in
26 furtherance of another activity described in this article),
27 54138, 5415, 541614, 5417, 55 (if not for the production of

1 electricity), 561422 (other than establishments that originate
2 telephone calls), and includes such trades and businesses as
3 may be hereafter added by an act of the Legislature,
4 reclassified in any subsequent publication of the North
5 American Industry Classification System or other industry
6 classification system developed in conjunction with the United
7 States Department of Commerce, or any process or treatment
8 facility which recycles, reclaims, or converts any materials,
9 which include solids, liquids, or gases, to a reusable product
10 562213, 56291, 56292, 611512, 927 or 92811.

11 2. A target of the state's economic development
12 efforts pursuant to either of the following:

13 (i) The Accelerate Alabama Strategic Economic
14 Development Plan adopted in January 2012 by the Alabama
15 Economic Development Alliance, created by Executive Order
16 Number 21 of the Governor on July 18, 2011, or any amended
17 version or successor document thereto; or

18 (ii) A type listed in a regulation adopted by the
19 Department of Commerce, other than a regulation submitted as
20 an emergency rule.

21 Notwithstanding the foregoing, the activities
22 described in this definition shall not predominantly concern
23 farming activities involving trees, animals or crops, nor the
24 retail sale of tangible personal property or services. This
25 provision shall not be deemed to exclude customer service
26 centers or call centers otherwise allowed or provided for
27 herein.

1 b. With respect to abatements granted in accordance
2 with Section 40-9B-9, and only with respect to such
3 abatements, "industrial or research enterprise" means any
4 trade or business described in ~~the 2007 North American~~
5 ~~Industry Classification System within Subsector~~ NAICS Code 493
6 ~~(Warehousing and Storage), Industry Number 488310 (Port and~~
7 ~~Harbor Operations), Industry Number or 488320 (Marine Cargo~~
8 ~~Handling)~~, when such trade or business is conducted on
9 premises in which the Alabama State Port Authority has an
10 ownership, leasehold, or other possessory interest and such
11 premises are used as part of the operations of the Alabama
12 State Port Authority.

13 c. "Industrial or research enterprise" includes the
14 above-described trades and business and any others as may
15 hereafter be reclassified in any subsequent publication of the
16 NAICS or similar industry classification system developed in
17 conjunction with the United States Department of Commerce or
18 Office of Management and Budget.

19 d. "Industrial or research enterprise" also includes
20 any underground natural gas storage facility which is located
21 in the Gulf Opportunity Zone, as that phrase is defined in the
22 Gulf Opportunity Zone Act of 2005, developed from existing
23 geologic reservoirs, including, without limitation, salt
24 domes, and placed in service on or before December 31, 2013.

25 e. "Industrial or research enterprise" also includes
26 any plant, property, or facility that meets both of the
27 following:

1 1. It produces electricity from:

2 (i) Alternative energy resources and has capital
3 costs of at least one hundred million dollars (\$100,000,000);
4 or

5 (ii) Hydropower production and has capital costs of
6 at least five million dollars (\$5,000,000).

7 2. All or a portion of the plant, property, or
8 facility is owned by one or more of the following:

9 (i) A utility described in Section 37-4-1(7)a., ~~an~~

10 (ii) An entity organized under the provisions of
11 Chapter 6 of Title 37, ~~or an~~

12 (iii) An authority both organized and existing
13 pursuant to the provisions of Chapter 50A of Title 11 and
14 subject to the payments required to be made in lieu of ad
15 valorem, sales, use, license, and severance taxes imposed by
16 Section 11-50A-7, ~~or an~~

17 (iv) An entity in which one or more of the foregoing
18 owns an interest.

19 f. "Industrial or research enterprise" also includes
20 any headquarters facility.

21 g. "Industrial or research enterprise" also includes
22 any data processing center.

23 h. "Industrial or research enterprise" also includes
24 any research and development facility.

25 i. "Industrial or research enterprise" also includes
26 any renewable energy facility.

1 j. "Industrial or research enterprise" also includes
2 any tourism destination attraction.

3 (11) MAJOR ADDITION. Any addition to an existing
4 industrial development property that equals the lesser of: 30
5 percent of the original cost of the industrial development
6 property or two million dollars (\$2,000,000). For purposes of
7 this subsection, the original cost of existing industrial
8 development property shall be the amount of industrial
9 development property with respect to which an abatement was
10 granted under this chapter when the property was constructed,
11 or if the existing industrial development property was
12 constructed before January 1, 1993, the maximum amount that
13 would have been allowed if the provisions of this chapter had
14 applied at the time it was constructed. Only property that
15 constitutes industrial development property shall be taken
16 into account in making the determination in the previous
17 sentence. Major addition shall include any addition costing at
18 least two million dollars (\$2,000,000) which constitutes an
19 industrial or research enterprise, regardless of whether added
20 to an existing industrial development property.

21 (12) MAXIMUM EXEMPTION PERIOD. Except as provided in
22 Section 40-9B-11, ~~either a period equal to the shorter of:~~

23 a. ~~A period equal to the shorter of~~ Either of the
24 following:

25 1. ~~Ten~~ Twenty years from and after: (i) The date of
26 initial issuance by a county, city, or public authority of
27 bonds to finance any costs of a private use property, or (ii)

1 If no such bonds are ever issued, the later of: A. The date on
2 which title to the property was acquired by or vested in the
3 county, city, or public authority, or B. The date on which the
4 property is or becomes owned, for federal income tax purposes,
5 by a private user; or

6 ~~2. The weighted average economic life of the assets~~
7 ~~comprising such property, determined consistently with the~~
8 ~~provisions of 26 U.S.C. § 147(b) and measured from the date~~
9 ~~such property is placed in service; or~~

10 ~~b~~2. Exclusively with respect to ~~a~~one or more private
11 users of a data processing center, the following:

12 (i) ~~a~~A period of 10 years from and after the date on
13 which private use property is or becomes owned, for federal
14 income tax purposes, by such private user or users (including
15 the lessor and any lessee with respect co-location centers),
16 if the aggregate capital investment in the data processing
17 center by ~~the~~ such private user or users does not exceed
18 \$200,000,000 within 10 years from the date on which ~~the~~a
19 private user commences the acquisition, construction, and
20 equipping of the data processing center,

21 (ii) ~~a~~A period of 20 years from and after the date
22 on which private use property is or becomes owned, for federal
23 income tax purposes, by such private user or users (including
24 the lessor and any lessee with respect to co-location
25 centers), if the aggregate capital investment in the data
26 processing center by ~~the~~such private user or users exceeds
27 \$200,000,000 but is not greater than \$400,000,000 within 10

1 years from the date on which ~~the~~a private user commences the
2 acquisition, construction, and equipping of the data
3 processing center, or

4 (iii) ~~a~~A period of 30 years from and after the date
5 on which private use property is or becomes owned, for federal
6 income tax purposes, by such private user or users (including
7 the lessor and any lessee with respect to co-location
8 centers), if the aggregate capital investment in the data
9 processing center by ~~the~~such private user or users exceeds
10 \$200,000,000 within 10 years from the date on which ~~the~~a
11 private user commences the physical work of constructing and
12 equipping the data processing center and exceeds \$400,000,000
13 within 20 years from the date on which ~~the~~a private user
14 commences the acquisition, construction, and equipping of the
15 data processing center.

16 For purposes of this subparagraph b2., a private
17 user's aggregate capital investment in a data processing
18 center shall include all real and personal property comprising
19 a data processing center, the costs of which may be
20 capitalized for federal income tax purposes. In no event shall
21 abatements of construction related transaction taxes or
22 noneducational ad valorem taxes granted for a data processing
23 center apply beyond the expiration of the applicable maximum
24 exemption period~~;~~ or

25 b. The period ending on the date on which the
26 property has ceased, for 6 consecutive months, to be used in
27 the active conduct of an industrial or research enterprise.

1 (13) MORTGAGE AND RECORDING TAXES. The taxes imposed
2 by Chapter 22 of this title.

3 (14) NAICS CODE. Any sector, subsector, industry
4 group, industry or national industry of the 2012 North
5 American Industry Classification System, or any similar
6 classification system developed in conjunction with the United
7 States Department of Commerce or Office of Management and
8 Budget.

9 (15) NONEDUCATIONAL AD VALOREM TAXES. Ad valorem
10 taxes, or payments required to be made in lieu thereof,
11 imposed by the state, counties, municipalities, and other
12 taxing jurisdictions of Alabama that are not required to be
13 used for educational purposes or for capital improvements for
14 education.

15 (15~~6~~) PERSON. Includes any individual, partnership,
16 trust, estate, or corporation.

17 (16~~7~~) PRIVATE USER. Any individual, partnership, or
18 corporation organized for profit that is or will be treated as
19 the owner of private use property for federal income tax
20 purposes, any entity organized under Chapter 6 of Title 37,
21 and any authority both organized and existing pursuant to
22 Chapter 50A of Title 11 and subject to the payments required
23 to be made in lieu of ad valorem, sales, use, license, and
24 severance taxes imposed by Section 11-50A-7.

25 (17~~8~~) PRIVATE USE INDUSTRIAL PROPERTY. Private use
26 property that also constitutes industrial development
27 property.

1 (~~18~~9) PRIVATE USE PROPERTY. Any real and/or personal
2 property which is or will be treated as owned by a private
3 user for federal income tax purposes even though title may be
4 held by a public authority or municipal or county government;
5 any real and/or personal property which is owned by any entity
6 organized under Chapter 6 of Title 37; and any real and/or
7 personal property which is owned by any authority both
8 organized and existing pursuant to Chapter 50A of Title 11,
9 and subject to the payments required to be made in lieu of ad
10 valorem, sales, use, license, and severance taxes imposed by
11 Section 11-50A-7.

12 (~~19~~20) PUBLIC AUTHORITY. A corporation created for
13 public purposes pursuant to a provision of the Constitution of
14 Alabama of 1901, or a general or local law that authorized it
15 to issue bonds, the interest on which is exempt from the
16 Alabama income tax, as in effect on May 21, 1992.

17 (~~20~~1) PUBLIC INDUSTRIAL AUTHORITY. A public
18 authority authorized to issue bonds to acquire, construct,
19 equip, or finance industrial development property.

20 (~~21~~2) RENEWABLE ENERGY FACILITY. Any plant,
21 property, or facility that either:

22 a. Produces electricity or natural gas, in whole or
23 in part, from biofuels as such term is defined in Section
24 2-2-90(c) (2) or from renewable energy resources as such term
25 is defined in Section 40-18-1(30) with the exception that
26 hydropower production shall be excluded from such definition;
27 or

1 b. Produces biofuel as such term is defined in
2 Section 2-2-90(c)(2).

3 (~~22~~3) RESEARCH AND DEVELOPMENT FACILITY. An
4 establishment engaged in conducting original investigations
5 undertaken on a systematic basis to gain new knowledge or
6 applying research findings or other scientific knowledge to
7 create new or significantly improved products or processes, or
8 both.

9 (~~23~~4) STATEMENT OF INTENT. A written statement of
10 intent to claim an abatement provided in this chapter, or to
11 petition for local tax abatement, relating to an industrial or
12 research enterprise described in paragraph e. of subdivision
13 (10) of this subsection that is filed with the Department of
14 Revenue at any time prior to the date on which the industrial
15 or research enterprise described in paragraph e. of
16 subdivision (10) of this subsection is placed in service in
17 accordance with such procedures and on such form or forms as
18 may be prescribed by the Department of Revenue. Such statement
19 of intent shall contain a description of the industrial or
20 research enterprise described in paragraph e. of subdivision
21 (10) of this subsection; the date on which the acquisition,
22 construction, installation, or equipping of the industrial or
23 research enterprise described in paragraph e. of subdivision
24 (10) of this subsection was commenced or is expected to
25 commence; the actual or, if not known, the estimated capital
26 costs of the industrial or research enterprise described in
27 paragraph e. of subdivision (10) of this subsection; the

1 number of new employees to be employed at the industrial or
2 research enterprise described in paragraph e. of subdivision
3 (10) of this subsection; and any other information required by
4 the Department of Revenue.

5 (245) TOURISM DESTINATION ATTRACTION. A commercial
6 enterprise which is open to the public not less than 120 days
7 during a calendar year and is designed to attract visitors
8 from inside or outside of the State of Alabama, typically for
9 its inherent cultural value, historical significance, natural
10 or man-made beauty, or entertainment or amusement
11 opportunities. The term shall include, but not be limited to,
12 a cultural or historical site; a botanical garden; a museum; a
13 wildlife park or aquarium open to the public that cares for
14 and displays a collection of animals or fish; an amusement
15 park; a convention hotel and conference center; a water park;
16 or a spectator venue or arena.

17 A tourism destination attraction shall not include a
18 facility primarily devoted to the retail sale of goods; a
19 shopping center; a restaurant; a movie theater; a bowling
20 alley; a fitness center; a miniature golf course; or a
21 nightclub. Provided, however, that the capital costs of the
22 construction of a tourism destination attraction may include
23 the capital costs associated with the construction of any
24 retail establishment, restaurant or other portion of the
25 tourism destination attraction. The term also does not include
26 any gaming facility or establishment that the Secretary of the

1 Department of Commerce deems to be serving the local
2 community.

3 (b) The abatements of ad valorem taxes, and payments
4 in lieu thereof, allowed by amendments to this section by Act
5 2008-275 shall become effective for projects for which
6 statements of intent are filed after December 31, 2011. No ad
7 valorem taxes, or payments in lieu thereof, shall be abated
8 for periods prior to January 1, 2012. The other abatements
9 allowed by amendments made to this section by Act 2008-275
10 shall become effective after December 31, 2011.

11 For a qualifying industrial or research enterprise
12 described in Section 40-9B-3(a)(10)j., the approval of the
13 abatement of a specified ad valorem tax or construction
14 related tax levied or imposed by a county or municipality, or
15 payments required to be made in lieu thereof, shall take
16 effect only upon adoption of a resolution by the governing
17 body of that county or municipality approving such abatement
18 or abatements."

19 "§40-9B-5.

20 "(a) Subject to the geographical or jurisdictional
21 or other limitations specified in subsections (b), (c), and
22 (d), the governing body of a municipality, a county, or a
23 public industrial authority may grant abatements of all of the
24 taxes allowed to be abated under Section 40-9B-4 with respect
25 to private use industrial property.

26 (b) (1) The abatements authorized to be granted
27 pursuant to subsection (a) for construction related

1 transaction taxes and for ad valorem taxes for a period not to
2 exceed 10 years may be granted:

3 ~~(1)~~a. By the governing body of a municipality, with
4 respect to private use industrial property located within the
5 limits of the municipality or within the police jurisdiction
6 of the municipality; provided, however, that the governing
7 body shall not grant an abatement of any county taxes unless
8 the body has also abated the corresponding municipal taxes.

9 ~~(2)~~b. By the governing body of a county, with
10 respect to private use industrial property located in the
11 county and not within a municipality or the police
12 jurisdiction of a municipality, unless consented to by
13 resolution of the governing body of the municipality.

14 ~~(3)~~c. By the governing body of a public industrial
15 authority, with respect to private use industrial property
16 located within the jurisdiction of the public industrial
17 authority; provided, however, that any municipal public
18 industrial authority shall not grant an abatement of any
19 county taxes unless the authority has also abated the
20 corresponding municipal taxes.

21 (2) The abatements authorized to be granted pursuant
22 to subsection (a) for ad valorem taxes for a period longer
23 than 10 years may be granted:

24 a. By the governing body of a municipality, with
25 respect to private use industrial property located within the
26 limits of the municipality or within the police jurisdiction

1 of the municipality, but only as to municipal noneducational
2 taxes.

3 b. By the governing body of a county, with respect
4 to private use industrial property located in the county, but
5 only as to county noneducational taxes.

6 c. By the Governor, with respect to private use
7 industrial property located in the state, but only as to state
8 taxes.

9 The governing body of a county and a municipality
10 may separately authorize one or more public industrial
11 authorities to provide by resolution for such consent on its
12 behalf.

13 (3) Notwithstanding the provisions of subsection (b)
14 of this section, abatements authorized to be granted pursuant
15 to subsection (a) for data processing centers may be granted
16 in accordance with subsection (b)(1) of this section without
17 regard to the time limitation stated in subsection (b)(1).

18 ~~(c) Should any municipality or municipal industrial~~
19 ~~authority abating a county tax receive payments,~~
20 ~~contributions, or other financial or in-kind awards from a~~
21 ~~corporation or other entity in exchange for such abatement,~~
22 ~~the payment, contribution, or other financial or in-kind~~
23 ~~contribution shall be divided between the municipality and~~
24 ~~county based upon the municipality's and county's portion of~~
25 ~~the tax proceeds which would have been paid if the tax were~~
26 ~~not abated by the authority. This subsection shall only apply~~
27 ~~to a municipal industrial authority which does not have a~~

1 ~~board member appointed by the affected county commission. If a~~
2 ~~tax is abated pursuant to this chapter, any payment,~~
3 ~~contribution, or other financial or in-kind award received~~
4 ~~from a private user or related party shall be divided between~~
5 ~~the parties whose taxes were abated based upon the tax~~
6 ~~proceeds which would have been paid if the taxes had not been~~
7 ~~abated, unless the party receiving such award can prove that~~
8 ~~the award was not related to the granting of any abatement.~~

9 (d) Any abatement of county taxes granted by a
10 municipality or municipal industrial authority shall not be
11 valid until the expiration of (1) 10 days following the date
12 of physical delivery to the county commission or (2) 13 days
13 following the date of mailing by certified mail to the county
14 commission of a copy of the resolution granting such
15 abatement. Proof of delivery by affidavit of service, in the
16 case of physical delivery, or by certified mail receipt, in
17 the case of mailing by certified mail, shall be furnished to
18 the Department of Revenue at the same time as the filing of
19 the abatement agreement under Section 40-9B-6. If the
20 procedures herein prescribed are followed, any such abatement
21 shall be effective as of the date granted."

22 Section 4. If a court of competent jurisdiction
23 adjudges invalid or unconstitutional any clause, sentence,
24 paragraph, section, or part of this act, such judgment or
25 decree shall not affect, impair, invalidate, or nullify the
26 remainder of this act, but the effect of the decision shall be

1 confined to the clause, sentence, paragraph, section, or part
2 of this act adjudged to be invalid or unconstitutional.

3 Section 5. All laws or parts of laws which conflict
4 with this act are repealed.

5 Section 6. This act shall become effective ninety
6 days following its passage and approval by the Governor, or
7 its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Economic Devel-
opment and Tourism..... 03-MAR-15

Read for the second time and placed
on the calendar..... 05-MAR-15

Read for the third time and passed
as amended..... 10-MAR-15

Yeas 80, Nays 1, Abstains 0

Jeff Woodard
Clerk